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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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IN THE MATTER OF THE APPLICATION OF
DIXIE-ESCALANTE RURAL ELECTRIC
ASSOCIATION, INC. FOR A
DETERMINATION OF THE FAIR VALUE OF
ITS PROPERTY AND FOR AN ORDER
SETTING JUST AND REASONABLE RATES.

DOCKET NO. E-02044A-12-0419

STAFF'S RESPONSIVE BRIEF**I. PROCEDURAL BACKGROUND.**

This matter arose out of a rate application filed with the Arizona Corporation Commission ("Commission") by Dixie Escalante Rural Electric Association, Inc. ("Dixie" or "Company") on September 25, 2012. A hearing on this Application was held June 17, 2013, during the course of which Staff recommended that Dixie file either (1) an application requesting approval of its existing long-term debt or (2) a request for a declaratory order that certain statutes requiring debt approval do not apply to Dixie regarding its past or future loan transactions. During the hearing, Dixie related that it would file a request for declaratory order by July 26, 2013.

On July 15, 2013, Dixie filed with the Commission a Petition for Declaratory Order ("Petition") to confirm that A.R.S. §§ 40-301, 40-302, 40-303 and 40-285 do not apply to Dixie in relation to past or future secured loan transactions.

In a telephonic Procedural Conference on August 29, 2013, Dixie and the Commission's Utilities Division ("Staff") discussed procedures for processing Dixie's Petition. During the Procedural Conference, the Administrative Law Judge ordered Staff to file a Responsive Brief by September 6, 2013, and Dixie a Reply Brief by September 13, 2013. In addition, based on the Company's desire to expedite the processing of its rate application which is presently set for consideration by the Commission at its Open Meeting on September 10, 2013, the parties agreed that

1 the rate application could go forward as scheduled and the docket would remain open for
2 consideration of the instant financing issues addressed in the Petition.

3 **II. DISCUSSION.**

4 In its Petition, Dixie submits, *inter alia*, that Decision No 72175, In the Matter of Garkane
5 Energy Cooperative, Inc. ("*Garkane*"), addressed issues similar to those presented in this case. Dixie
6 further argues that, as in *Garkane*, in light of the Utah Public Service Commission's ("UPSC")
7 jurisdiction over its secured loan transactions, requiring Arizona approval of Dixie's financing
8 transactions would pose a significant potential burden of inconsistent regulation between the two
9 state entities and that the Commission's interest in exercising its jurisdiction under Arizona's statutes
10 is clearly outweighed by the onerous impact on interstate commerce.

11 As in *Garkane*, the seminal issue in the instant matter is the applicability of A.R.S. §§ 40-301,
12 40-302 and 40-303 to future financings and §40-285 to future encumbrances involving Dixie's debt
13 transactions. Based on the information set forth in the Petition, Staff believes the Company has set
14 forth sufficient facts upon which an informed and well-founded decision could be reached that the
15 instant facts are generally similar to *Garkane* and, therefore, the protections afforded the Company's
16 Arizona ratepayers under the referenced statutes are present.

17 **A. The Facts as Presented by Dixie Satisfy the Criteria Set Forth in *Garkane*.**

18 In *Garkane*, the Commission prescribes criteria for utilities such as Dixie to meet in order for
19 A.R.S. §§ 40-301 through 40-303 and § 40-285 to not apply to financing and encumbrances.¹ In its
20 Petition, Dixie delineates various facts intended to satisfy these criteria including, without limitation,
21 the following. Like *Garkane*, Dixie is a nonprofit rural electric cooperative based in Utah which has
22 been serving Arizona customers for a significant period, in this instance pursuant to a Certificate of
23 Convenience and Necessity ("CC&N") issued in 1978.² In 2012, Dixie served a total of
24 approximately 15,700 customers, about 13,500 (86%) of which are located in Utah and 2,200 (14%)
25 in Mohave County, Arizona. In addition, Dixie submits that, in 2012 92.3% (362,380,496 kWh) of
26 its 392,573,880 kWh sold were to Utah customers and 7.7% (30,193,384 kWh) to Arizona customers.

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28 ¹ Decision No. 72175, p. 18:23 – 19:15.

² Decision No. 49208 dated July 28, 1978.

1 Similarly, 91.7% (\$20,869,474) of its \$22,746,854 2012 total electric revenue was derived from Utah
2 customers compared to 8.3% (\$1,877,380) from Arizona customers.

3 Dixie further asserts that it is financially sound and, in the event the Commission approves its
4 pending rate request, it will have a 4.93 TIER and a 3.94 DSC on a combined Arizona and Utah
5 basis, both of which exceed loan covenant requirements according to Staff witness Mary J.
6 Rimback's April 23, 2013, Direct Testimony. Moreover, Dixie's financial transactions, as were
7 *Garkane's*, are reviewed by the UPSC and governed by Utah statutes. Such transactions are also
8 subject to significant oversight by the United States Code and Code of Federal Regulations as the
9 provisions thereof pertain to Dixie as a Rural Utilities Service ("RUS") borrower.

10 Based on the then-existing facts, the Commission in *Garkane* determined that its interest in
11 exercising jurisdiction to regulate financial transactions under A.R.S. §§ 40-301, 40-302, 30-303 and
12 40-285 was clearly outweighed by the onerous impact to interstate commerce. The Commission
13 further found that *Garkane* was not required to apply for approval of each future transaction which
14 would otherwise be required under the specific provisions of those statutes. However, the
15 Commission did order *Garkane* to file, for informational purposes, any application for approval of
16 financing filed with the UPSC and any subsequent Order issued thereby.

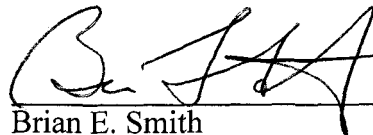
17 In its Petition, Dixie contends that the facts of this matter mirror to a great degree those
18 present in *Garkane* and that the same result should obtain in this instance. Dixie further relates that it
19 is willing to provide Commission Staff with a courtesy copy of all future financing applications filed
20 with the UPSC together with an affidavit verifying the then-existing percentage split of its customers
21 in Utah and Arizona.

22 **III. CONCLUSION.**

23 Given the legal analysis and facts set forth in Decision No. 72175 in *Garkane* together with
24 the factual background provided by Dixie in its Petition, Staff believes Dixie has adequately provided
25 sufficient facts to warrant a finding commensurate with the Commission's conclusions in *Garkane*.
26 However, Staff would emphasize the need for the Commission to require Dixie to file courtesy copies
27 with the Commission and Staff of all future financing applications, affidavits verifying its then-
28

1 existing percentages of Utah and Arizona customers, and any orders issued relative thereto by the
2 UPSC.

3 RESPECTFULLY SUBMITTED this 6th day of September 2013.

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5 
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12 Original and thirteen (13) copies
13 of the foregoing filed this
14 6th day of September 2013 with:

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20 6th day of September 2013 to:

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